

Supreme Court, U.S.
FILED

No. 05-759 DEC 8 - 2005

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In The
Supreme Court of the United States

ROBERT RICHARD KING,

Petitioner,

v.

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF MISSOURI,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Eighth Circuit Court of Appeals erred when it denied petitioner King's Petition for a Writ of Mandamus to the District Court for the Western District of Missouri, Western Division, from the Judge's refusal to disqualify himself, pursuant to title 28 U.S.C. §453, §455 and §144.
2. Whether the Honorable Judge, Scott O. Wright, erred when he denied petitioner King's Motion for Recusal to disqualify himself, upon petitioner King's Motion, showing when the Judge demonstrated his inability to understand the essence of the case, his mental infirmities, his preconception of petitioner King's guilt and his senility by his own admission, Inter Alia relevant issues argued herein. Whether such errors by the Honorable Judge constituted a denial of petitioner King's Constitutional Right to a fair trial pursuant to the Sixth Amendment of the United States Constitution.

PARTIES TO THE PROCEEDING

The parties to this action are:

1. Robert Richard King, Petitioner
2. United States District Court, Western District of Missouri, Western Division, by United States Solicitor General, Respondent

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CITATION OF THE OPINION BELOW

The opinions rendered below are not reported. The District court's order denying King's motion is reproduced in Appendix B (B1). The Eighth Circuit court's Mandate is reproduced in Appendix A (A2). The Eighth Circuit court's order denying King's motion for reconsideration is reproduced in Appendix A (A1).

STATEMENT OF JURISDICTION

The Judgement/Order denying King's petition for a Writ of Mandamus, was entered on August 30, 2005, by the Eighth Circuit Court of Appeals. King's timely petition for reconsideration was denied on September 21, 2005. This petition was filed within 90 days of September 21, 2005. Jurisdiction of this Honorable Court is founded on 28 U.S.C. §1254(1).

STATUTES INVOLVED

28 U.S.C. §144, which provides:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

28 U.S.C. §453, which provides:

Each justice or judge of the United States shall take the following oath or affirmation before

performing the duties of his office: "I, _____
 _____ do solemnly swear (or affirm) that I will
 administer justice without respect to persons,
 and do equal right to the poor and to the rich,
 and that I will faithfully and impartially dis-
 charge and perform all the duties incumbent
 upon me as _____ under the Constitution and
 laws of the United States. So help me God."

28 U.S.C. §455, which provides:

- (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it; (3) Where he has served in governmental employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy; (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by

the outcome of the proceeding; (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person: (i) Is a party to the proceeding, or an officer, director, or trustee of a party; (ii) Is acting as a lawyer in the proceeding; (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; (iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

STATEMENT OF THE CASE

On June 27, 2001, petitioner King, Inter Alia, were charged by indictment with conspiracy to violate the Foreign Corrupt Practices Act (Count 1); seven substantive Foreign Corrupt Practices Act violations (Counts 2-8); and two "Travel Act" violations alleging acts contrary to the Missouri Commercial Bribery Statute (Counts 9-10).

The trial commenced on June 17, 2002. At the end of the Government's case-in-chief, the trial Court dismissed the Travel Act charges (Counts 9-10) and three Foreign Corrupt Act charges (Counts 2, 3 and 4).

On June 24, 2002, the Jury returned verdicts of guilty as to the remaining charges. On November 12, 2002, King was sentenced to a term of imprisonment of thirty (30) months plus two (2) years of supervised release, and a fine of \$60,000.00.

On March 28, 2003, King appealed, seeking review of the District Court judgment. On December 15, 2003, the Eighth Circuit Court of Appeals, affirmed King's conviction

on all counts. The opinion is reported at 351 F.3d 859 (8th Cir. 2003). King's timely petition for rehearing and rehearing en banc were denied on February 19, 2004. King's timely petition for Certiorari was denied on June 14, 2004.

Petitioner King, is now pursuing collateral relief. On June 24, 2005, King filed a "Motion for Recusal of District Judge," requesting that the Honorable, Senior District Judge, Scott O. Wright disqualify himself from this case, pursuant to title 28 U.S.C. §453, §455 and §144. That motion was denied on August 8, 2005 (B1). On August 13, 2005, King timely filed a Petition for Writ of Mandamus, seeking an order to disqualify a District Judge. King's Petition for Writ of Mandamus was denied on August 30, 2005 (A2). King's timely Petition for reconsideration of his Petition for Writ of Mandamus was denied on September 21, 2005 (A1). This Petition for Writ of Certiorari follows.

ARGUMENT

I. THE EIGHTH CIRCUIT COURT OF APPEALS ERRED WHEN IT DENIED KING'S PETITION FOR A WRIT OF MANDAMUS.

General Principles and Standards of Review

A Court of Appeals should issue a Writ of Mandamus to confine a District Court to a lawful exercise of its prescribed jurisdiction or to compel a District Court to exercise its authority when it has a duty to do so. *Mallard v. U.S. Dist. Court for Southern Dist. of Iowa*, 490 U.S. 296, 308, 109 S.Ct. 1814, 104 L.Ed.2d 318 (1989).

"There can be no doubt that, where a District Court persistently and without reason refuses to adjudicate a

case properly before it, the Court of Appeals may issue a Writ of Mandamus, in order that [it] may exercise the jurisdiction of review given by law." *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 661-62 98 S.Ct. 2552, 57 L.Ed.2d 504 (1978), citing *Knickerbocker Ins. Co., of Chicago v. Comstock*, 83 U.S. 258, 21 L.Ed.2d 493 (1972).

"A party seeking Mandamus must show both, that it is a clear entitlement to the relief requested, and that irreparable harm will likely occur if the writ is withheld." *In re U.S.*, 158 F.3d 26, 30 (1st Cir. 1998); *In re Cargill Inc.*, 66 F.3d 1256, 1260 (1st Cir. 1995).

Mandamus is the proper remedy in the case at bar. Petitioner King acknowledges that a Writ of Mandamus is an extraordinary remedy. *Allied Chemical Corp. v. Daiflon, Inc.*, 499 U.S. 33, 34, 101 S.Ct. 188, 66 L.Ed.2d 193 (1980); *United States v. Billmyer*, 57 F.3d 31, 37 (1st Cir. 1995). However, one of the primary reasons that Writs of Mandamus are disfavored by the Courts is that they contribute to "piecemeal" litigation. *Mallard*, 490 U.S. at 309; *Allied Chemical Corp.*, 499 U.S. at 35; *In re United States*, 158 F.3d at 30; *In re Cargill, Inc.*, 66 F.3d at 1259. Indeed, this Honorable Court has noted that "[t]his general policy against piecemeal appeals takes on added weight in criminal cases, where the defense is entitled to speedy resolution of the charges against the defendant(s)." *Will v. United States*, 389 U.S. 90, 96, 88 S.Ct. 269, 19 L.Ed.2d 305 (1967).

In the case at bar, this well-founded concern about piecemeal litigation is exactly the reason a Writ of Mandamus should be issued immediately. Petitioner King's §2255 Motion is now before the very same Judge (Honorable Scott O. Wright), who King is seeking to disqualify from this case. In King's §2255 Motion he is alleging Judge

Wright's misconduct, his mental infirmities and his pre-conception of King's guilt.

II. THE HONORABLE JUDGE, SCOTT O. WRIGHT, ERRED WHEN HE DENIED PETITIONER KING'S MOTION FOR RECUSAL TO DISQUALIFY HIMSELF, UPON PETITIONER KING'S MOTION, SHOWING WHEN THE JUDGE DEMONSTRATED HIS INABILITY TO UNDERSTAND THE ESSENCE OF THE CASE, HIS MENTAL INFIRMITIES, HIS PRECONCEPTION OF PETITIONER KING'S GUILT AND HIS SENILITY BY HIS OWN ADMISSION.

(a) During the five-day trial, it became very clear that the Honorable Judge Wright's ability of recollection was impaired. At trial, the Judge took the bench for approximately thirty minutes, sometimes standing at his bench, and with the major portion in the presence of the jury, before he realized that he had forgotten to put on his robes. (Tr.984).

(b) At trial, Judge Wright's own words shows that he had problems with his ability to retain information. "Yeah. When you get to be 79, you get a little senile. You all have something to look forward to . . ." (Tr.985). When the Judge said that he was getting senile, he may say now that he didn't mean it, however, petitioner King doesn't think so. Petitioner King considers himself to have a good mental capability, nevertheless, he must admit that his mind is not as sharp at 71 as it was when he was a young fighter pilot.

(c) This case is a very complex case which involves thousands of pages of records. Numerous witnesses' statements were also introduced at trial. Petitioner King